

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY MARCH 28, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1022

Introduced by Assembly Member Saldana
(Coauthors: Assembly Members Berg, Horton, and Mendoza)

February 22, 2007

An act to amend Sections 1569.145, 1771, ~~and 1771.3~~ 1771.3, 1771.8, and 1790 of, and to add Section ~~1793.62~~ 1793.63 to, the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 1022, as amended, Saldana. Continuing care home service.

Existing law provides for the regulation by the State Department of Social Services of activities relating to continuing care contracts that govern care provided to an elderly resident in a continuing care retirement community for the duration of the resident's life or a term in excess of one year. Existing law designates the contents of a continuing care contract, including the conditions under which a resident of a continuing care retirement community may be voluntarily or involuntarily transferred from his or her designated living unit.

Under existing law, an entity that issues, delivers, or publishes, or as manager or officer or in any other administrative capacity, assists in the issuance, delivery, or publication of any printed matter, oral representation, or advertising material that does not comply with the requirements of the law relating to continuing care contracts is guilty of a misdemeanor.

This bill would exempt a continuing care at home program, as defined, from the licensing provisions applicable to residential care facilities for the elderly, if certain conditions are met, and would set forth certain requirements for, and authorized services of, a continuing care at home program. The bill would increase from \$7,500 to \$10,000 the maximum entrance fee for certain residence agreements exempt from continuing care contract provisions, and would require annual adjustments for cost-of-living increases.

By revising the provisions relating to continuing care—~~provides providers~~, this bill would change the definition of an existing crime, thus imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1569.145 of the Health and Safety Code
- 2 is amended to read:
- 3 1569.145. This chapter shall not apply to any of the following:
- 4 (a) Any health facility, as defined by Section 1250.
- 5 (b) Any clinic, as defined by Section 1202.
- 6 (c) Any facility conducted by and for the adherents of any
- 7 well-recognized church or religious denomination for the purpose
- 8 of providing facilities for the care or treatment of the sick who
- 9 depend upon prayer or spiritual means for healing in the practice
- 10 of the religion of such church or denomination.
- 11 (d) Any house, institution, hotel, congregate housing project
- 12 for the elderly, or other similar place that is limited to providing
- 13 one or more of the following: housing, meals, transportation,
- 14 housekeeping, or recreational and social activities; or that have
- 15 residents independently accessing supportive services; provided,
- 16 however, that no resident thereof requires any element of care and
- 17 supervision or protective supervision as determined by the director.
- 18 This subdivision shall not include a home or residence that is
- 19 described in subdivision (f).

1 (e) Recovery houses or other similar facilities providing group
2 living arrangements for persons recovering from alcoholism or
3 drug addiction where the facility provides no care or supervision.

4 (f) (1) Any arrangement for the care and supervision of a person
5 or persons by a family member.

6 (2) Any arrangement for the care and supervision of a person
7 or persons from only one family by a close friend, whose friendship
8 preexisted the contact between the provider and the recipient, and
9 both of the following are met:

10 (A) The care and supervision is provided in a home or residence
11 chosen by the recipient.

12 (B) The arrangement is not of a business nature and occurs only
13 as long as the needs of the recipient for care and supervision are
14 adequately met.

15 (g) Any housing for elderly or disabled persons, or both, that is
16 approved and operated pursuant to Section 202 of Public Law
17 86-372 (12 U.S.C.A. Sec. 1701q), or Section 811 of Public Law
18 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured
19 pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec.
20 1715z), or that receives mortgage assistance pursuant to Section
21 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where
22 supportive services are made available to residents at their option,
23 as long as the project owner or operator does not contract for or
24 provide the supportive services. The project owner or operator
25 may coordinate, or help residents gain access to, the supportive
26 services, either directly, or through a service coordinator.

27 (h) Any similar facility determined by the director.

28 (i) For purposes of this section, “family member” means any
29 spouse, by marriage or otherwise, child or stepchild, by natural
30 birth or by adoption, parent, brother, sister, half brother, half sister,
31 parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt,
32 uncle, first cousin, or any person denoted by the prefix “grand” or
33 “great,” or the spouse of any of these persons.

34 (j) A person shall not be exempted from this chapter’s licensure
35 requirements if he or she has been appointed as conservator of the
36 person, estate of the person, or both, if the person is receiving care
37 and supervision from the conservator as regulated by this chapter,
38 unless the conservator is otherwise exempted under other
39 provisions of this section.

1 (k) An elderly person's private residence where services are
2 provided by a continuing care at home program as defined in
3 paragraph (10) of subdivision (c) of Section 1771.

4 SEC. 2. Section 1771 of the Health and Safety Code is amended
5 to read:

6 1771. Unless the context otherwise requires, the definitions in
7 this section govern the interpretation of this chapter.

8 (a) (1) "Affiliate" means any person, corporation, limited
9 liability company, business trust, trust, partnership, unincorporated
10 association, or other legal entity that directly or indirectly controls,
11 is controlled by, or is under common control with, a provider or
12 applicant.

13 (2) "Affinity group" means a grouping of entities sharing a
14 common interest, philosophy, or connection (e.g., military officers,
15 religion).

16 (3) "Annual report" means the report each provider is required
17 to file annually with the department, as described in Section 1790.

18 (4) "Applicant" means any entity, or combination of entities,
19 that submits and has pending an application to the department for
20 a permit to accept deposits and a certificate of authority.

21 (5) "Assisted living services" includes, but is not limited to,
22 assistance with personal activities of daily living, including
23 dressing, feeding, toileting, bathing, grooming, mobility, and
24 associated tasks, to help provide for and maintain physical and
25 psychosocial comfort.

26 (6) "Assisted living unit" means the living area or unit within
27 a continuing care retirement community that is specifically
28 designed to provide ongoing assisted living services.

29 (7) "Audited financial statement" means financial statements
30 prepared in accordance with generally accepted accounting
31 principles including the opinion of an independent certified public
32 accountant, and notes to the financial statements considered
33 customary or necessary to provide full disclosure and complete
34 information regarding the provider's financial statements, financial
35 condition, and operation.

36 (b) (reserved)

37 (c) (1) "Cancel" means to destroy the force and effect of an
38 agreement or continuing care contract.

39 (2) "Cancellation period" means the 90-day period, beginning
40 when the resident physically moves into the continuing care

1 retirement community, during which the resident may cancel the
2 continuing care contract, as provided in Section 1788.2.

3 (3) “Care” means nursing, medical, or other health-related
4 services, protection or supervision, assistance with the personal
5 activities of daily living, or any combination of those services.

6 (4) “Cash equivalent” means certificates of deposit and United
7 States Treasury securities with a maturity of five years or less.

8 (5) “Certificate” or “certificate of authority” means the
9 certificate issued by the department, properly executed and bearing
10 the State Seal, authorizing a specified provider to enter into one
11 or more continuing care contracts at a single specified continuing
12 care retirement community.

13 (6) “Condition” means a restriction, specific action, or other
14 requirement imposed by the department for the initial or continuing
15 validity of a permit to accept deposits, a provisional certificate of
16 authority, or a certificate of authority. A condition may limit the
17 circumstances under which the provider may enter into any new
18 deposit agreement or contract, or may be imposed as a condition
19 precedent to the issuance of a permit to accept deposits, a
20 provisional certificate of authority, or a certificate of authority.

21 (7) “Consideration” means some right, interest, profit, or benefit
22 paid, transferred, promised, or provided by one party to another
23 as an inducement to contract. Consideration includes some
24 forbearance, detriment, loss, or responsibility, that is given,
25 suffered, or undertaken by a party as an inducement to another
26 party to contract.

27 (8) “Continuing care contract” means a contract that includes
28 a continuing care promise made, in exchange for an entrance fee,
29 the payment of periodic charges, or both types of payments. A
30 continuing care contract may consist of one agreement or a series
31 of agreements and other writings incorporated by reference.

32 (9) “Continuing care advisory committee” means an advisory
33 panel appointed pursuant to Section 1777.

34 (10) “Continuing care at home program” means a program
35 offered by a provider or a multilevel retirement community that
36 meets the exemption from the continuing care contract provisions
37 pursuant to subdivision (b) of Section 1771.3, that furnishes one
38 or more services to an elderly person in the elderly person’s own
39 private residence, including, but not limited to, meals,
40 housekeeping, laundry, home maintenance, grounds maintenance,

1 companionship, social activities, recreational activities, and
2 referrals to other care providers. For the purposes of this paragraph,
3 “private residence” does not include residence at a licensed
4 continuing care retirement community facility or at a multilevel
5 retirement community facility.

6 (11) “Continuing care promise” means a promise, expressed or
7 implied, by a provider to provide one or more elements of care to
8 an elderly resident for the duration of his or her life or for a term
9 in excess of one year. Any such promise or representation, whether
10 part of a continuing care contract, other agreement, or series of
11 agreements, or contained in any advertisement, brochure, or other
12 material, either written or oral, is a continuing care promise.

13 (12) “Continuing care retirement community” means a facility
14 located within the State of California where services promised in
15 a continuing care contract are provided. A distinct phase of
16 development approved by the department may be considered to
17 be the continuing care retirement community when a project is
18 being developed in successive distinct phases over a period of
19 time. When the services are provided in residents’ own homes, the
20 homes into which the provider takes those services are considered
21 part of the continuing care retirement community.

22 (13) “Control” means directing or causing the direction of the
23 financial management or the policies of another entity, including
24 an operator of a continuing care retirement community, whether
25 by means of the controlling entity’s ownership interest, contract,
26 or any other involvement. A parent entity or sole member of an
27 entity controls a subsidiary entity provider for a continuing care
28 retirement community if its officers, directors, or agents directly
29 participate in the management of the subsidiary entity or in the
30 initiation or approval of policies that affect the continuing care
31 retirement community’s operations, including, but not limited to,
32 approving budgets or the administrator for a continuing care
33 retirement community.

34 (d) (1) “Department” means the State Department of Social
35 Services.

36 (2) “Deposit” means any transfer of consideration, including a
37 promise to transfer money or property, made by a depositor to any
38 entity that promises or proposes to promise to provide continuing
39 care, but is not authorized to enter into a continuing care contract
40 with the potential depositor.

1 (3) "Deposit agreement" means any agreement made between
2 any entity accepting a deposit and a depositor. Deposit agreements
3 for deposits received by an applicant prior to the department's
4 release of funds from the deposit escrow account shall be subject
5 to the requirements described in Section 1780.4.

6 (4) "Depository" means a bank or institution that is a member
7 of the Federal Deposit Insurance Corporation or a comparable
8 deposit insurance program.

9 (5) "Depositor" means any prospective resident who pays a
10 deposit. Where any portion of the consideration transferred to an
11 applicant as a deposit or to a provider as consideration for a
12 continuing care contract is transferred by a person other than the
13 prospective resident or a resident, that third-party transferor shall
14 have the same cancellation or refund rights as the prospective
15 resident or resident for whose benefit the consideration was
16 transferred.

17 (6) "Director" means the Director of Social Services.

18 (e) (1) "Elderly" means an individual who is 60 years of age
19 or older.

20 (2) "Entity" means an individual, partnership, corporation,
21 limited liability company, and any other form for doing business.
22 Entity includes a person, sole proprietorship, estate, trust,
23 association, and joint venture.

24 (3) "Entrance fee" means the sum of any initial, amortized, or
25 deferred transfer of consideration made or promised to be made
26 by, or on behalf of, a person entering into a continuing care contract
27 for the purpose of assuring care or related services pursuant to that
28 continuing care contract or as full or partial payment for the
29 promise to provide care for the term of the continuing care contract.
30 Entrance fee includes the purchase price of a condominium,
31 cooperative, or other interest sold in connection with a promise of
32 continuing care. An initial, amortized, or deferred transfer of
33 consideration that is greater in value than 12 times the monthly
34 care fee shall be presumed to be an entrance fee.

35 (4) "Equity" means the value of real property in excess of the
36 aggregate amount of all liabilities secured by the property.

37 (5) "Equity interest" means an interest held by a resident in a
38 continuing care retirement community that consists of either an
39 ownership interest in any part of the continuing care retirement

1 community property or a transferable membership that entitles the
2 holder to reside at the continuing care retirement community.

3 (6) “Equity project” means a continuing care retirement
4 community where residents receive an equity interest in the
5 continuing care retirement community property.

6 (7) “Equity securities” shall refer generally to large and
7 midcapitalization corporate stocks that are publicly traded and
8 readily liquidated for cash, and shall include shares in mutual funds
9 that hold portfolios consisting predominantly of these stocks and
10 other qualifying assets, as defined by Section 1792.2. Equity
11 securities shall also include other similar securities that are
12 specifically approved by the department.

13 (8) “Escrow agent” means a bank or institution, including, but
14 not limited to, a title insurance company, approved by the
15 department to hold and render accountings for deposits of cash or
16 cash equivalents.

17 (f) “Facility” means any place or accommodation where a
18 provider provides or will provide a resident with care or related
19 services, whether or not the place or accommodation is constructed,
20 owned, leased, rented, or otherwise contracted for by the provider.

21 (g) (reserved)

22 (h) (reserved)

23 (i) (1) “Inactive certificate of authority” means a certificate that
24 has been terminated under Section 1793.8.

25 (2) “Investment securities” means any of the following:

26 (A) Direct obligations of the United States, including obligations
27 issued or held in book-entry form on the books of the United States
28 Department of the Treasury or obligations the timely payment of
29 the principal of, and the interest on, which are fully guaranteed by
30 the United States.

31 (B) Obligations, debentures, notes, or other evidences of
32 indebtedness issued or guaranteed by any of the following:

33 (i) The Federal Home Loan Bank System.

34 (ii) The Export-Import Bank of the United States.

35 (iii) The Federal Financing Bank.

36 (iv) The Government National Mortgage Association.

37 (v) The Farmer’s Home Administration.

38 (vi) The Federal Home Loan Mortgage Corporation of the
39 Federal Housing Administration.

1 (vii) Any agency, department, or other instrumentality of the
2 United States if the obligations are rated in one of the two highest
3 rating categories of each rating agency rating those obligations.

4 (C) Bonds of the State of California or of any county, city and
5 county, or city in this state, if rated in one of the two highest rating
6 categories of each rating agency rating those bonds.

7 (D) Commercial paper of finance companies and banking
8 institutions rated in one of the two highest categories of each rating
9 agency rating those instruments.

10 (E) Repurchase agreements fully secured by collateral security
11 described in subparagraph (A) or (B), as evidenced by an opinion
12 of counsel, if the collateral is held by the provider or a third party
13 during the term of the repurchase agreement, pursuant to the terms
14 of the agreement, subject to liens or claims of third parties, and
15 has a market value, which is determined at least every 14 days, at
16 least equal to the amount so invested.

17 (F) Long-term investment agreements, which have maturity
18 dates in excess of one year, with financial institutions, including,
19 but not limited to, banks and insurance companies or their affiliates,
20 if the financial institution's paying ability for debt obligations or
21 long-term claims or the paying ability of a related guarantor of the
22 financial institution for these obligations or claims, is rated in one
23 of the two highest rating categories of each rating agency rating
24 those instruments, or if the short-term investment agreements are
25 with the financial institution or the related guarantor of the financial
26 institution, the long-term or short-term debt obligations, whichever
27 is applicable, of which are rated in one of the two highest long-term
28 or short-term rating categories, of each rating agency rating the
29 bonds of the financial institution or the related guarantor, provided
30 that if the rating falls below the two highest rating categories, the
31 investment agreement shall allow the provider the option to replace
32 the financial institution or the related guarantor of the financial
33 institution or shall provide for the investment securities to be fully
34 collateralized by investments described in subparagraph (A), and,
35 provided further, if so collateralized, that the provider has a
36 perfected first security lien on the collateral, as evidenced by an
37 opinion of counsel and the collateral is held by the provider.

38 (G) Banker's acceptances or certificates of deposit of, or time
39 deposits in, any savings and loan association that meets any of the
40 following criteria:

1 (i) The debt obligations of the savings and loan association, or
2 in the case of a principal bank, of the bank holding company, are
3 rated in one of the two highest rating categories of each rating
4 agency rating those instruments.

5 (ii) The certificates of deposit or time deposits are fully insured
6 by the Federal Deposit Insurance Corporation.

7 (iii) The certificates of deposit or time deposits are secured at
8 all times, in the manner and to the extent provided by law, by
9 collateral security described in subparagraph (A) or (B) with a
10 market value, valued at least quarterly, of no less than the original
11 amount of moneys so invested.

12 (H) Taxable money market government portfolios restricted to
13 obligations issued or guaranteed as to payment of principal and
14 interest by the full faith and credit of the United States.

15 (I) Obligations the interest on which is excluded from gross
16 income for federal income tax purposes and money market mutual
17 funds whose portfolios are restricted to these obligations, if the
18 obligations or mutual funds are rated in one of the two highest
19 rating categories by each rating agency rating those obligations.

20 (J) Bonds that are not issued by the United States or any federal
21 agency, but that are listed on a national exchange and that are rated
22 at least “A” by Moody’s Investors Service, or the equivalent rating
23 by Standard and Poor’s Corporation or Fitch Investors Service.

24 (K) Bonds not listed on a national exchange that are traded on
25 an over-the-counter basis, and that are rated at least “Aa” by
26 Moody’s Investors Service or “AA” by Standard and Poor’s
27 Corporation or Fitch Investors Service.

28 (j) (reserved)

29 (k) (reserved)

30 (l) “Life care contract” means a continuing care contract that
31 includes a promise, expressed or implied, by a provider to provide
32 or pay for routine services at all levels of care, including acute
33 care and the services of physicians and surgeons, to the extent not
34 covered by other public or private insurance benefits, to a resident
35 for the duration of his or her life. Care shall be provided under a
36 life care contract in a continuing care retirement community having
37 a comprehensive continuum of care, including a skilled nursing
38 facility, under the ownership and supervision of the provider on
39 or adjacent to the premises. No change may be made in the monthly
40 fee based on level of care. A life care contract shall also include

1 provisions to subsidize residents who become financially unable
2 to pay their monthly care fees.

3 (m) (1) “Monthly care fee” means the fee charged to a resident
4 in a continuing care contract on a monthly or other periodic basis
5 for current accommodations and services including care, board,
6 or lodging. Periodic entrance fee payments or other prepayments
7 shall not be monthly care fees.

8 (2) “Monthly fee contract” means a continuing care contract
9 that requires residents to pay monthly care fees.

10 (n) *“Multilevel retirement community” means a long-term care*
11 *community or campus that includes independent living services,*
12 *assisted living services, as defined in paragraph (5) of subdivision*
13 *(a) and skilled nursing services that are provided in a similar*
14 *manner as those services are provided within a continuing care*
15 *retirement community, provided that the community or campus*
16 *does not offer continuing care contracts, and is exempt from this*
17 *chapter pursuant to subdivision (b) of Section 1771.3.*

18 ~~(n)~~

19 (o) “Nonambulatory person” means a person who is unable to
20 leave a building unassisted under emergency conditions in the
21 manner described by Section 13131.

22 ~~(o)~~

23 (p) (reserved)

24 ~~(p)~~

25 (q) (1) “Per capita cost” means a continuing care retirement
26 community’s operating expenses, excluding depreciation, divided
27 by the average number of residents.

28 (2) “Periodic charges” means fees paid by a resident on a
29 periodic basis.

30 (3) “Permit to accept deposits” means a written authorization
31 by the department permitting an applicant to enter into deposit
32 agreements regarding a single specified continuing care retirement
33 community.

34 (4) “Prepaid contract” means a continuing care contract in which
35 the monthly care fee, if any, may not be adjusted to cover the actual
36 cost of care and services.

37 (5) “Preferred access” means that residents who have previously
38 occupied a residential living unit have a right over other persons
39 to any assisted living or skilled nursing beds that are available at
40 the community.

(6) “Processing fee” means a payment to cover administrative costs of processing the application of a depositor or prospective resident.

(7) “Promise to provide one or more elements of care” means any expressed or implied representation that one or more elements of care will be provided or will be available, such as by preferred access.

(8) “Proposes” means a representation that an applicant or provider will or intends to make a future promise to provide care, including a promise that is subject to a condition, such as the construction of a continuing care retirement community or the acquisition of a certificate of authority.

(9) “Provider” means an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. “Provider” also includes any entity that controls an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. The department shall determine whether an entity controls another entity for purposes of this article. No homeowner’s association, cooperative, or condominium association may be a provider.

(10) “Provisional certificate of authority” means the certificate issued by the department, properly executed and bearing the State Seal, under Section 1786. A provisional certificate of authority shall be limited to the specific continuing care retirement community and number of units identified in the applicant’s application.

~~(q)~~

(r) (reserved)

~~(r)~~

(s) (1) “Refund reserve” means the reserve a provider is required to maintain, as provided in Section 1792.6.

(2) “Refundable contract” means a continuing care contract that includes a promise, expressed or implied, by the provider to pay an entrance fee refund or to repurchase the transferor’s unit, membership, stock, or other interest in the continuing care retirement community when the promise to refund some or all of the initial entrance fee extends beyond the resident’s sixth year of residency. Providers that enter into refundable contracts shall be subject to the refund reserve requirements of Section 1792.6. A continuing care contract that includes a promise to repay all or a

1 portion of an entrance fee that is conditioned upon reoccupancy
2 or resale of the unit previously occupied by the resident shall not
3 be considered a refundable contract for purposes of the refund
4 reserve requirements of Section 1792.6, provided that this
5 conditional promise of repayment is not referred to by the applicant
6 or provider as a “refund.”

7 (3) “Resale fee” means a levy by the provider against the
8 proceeds from the sale of a transferor’s equity interest.

9 (4) “Reservation fee” refers to consideration collected by an
10 entity that has made a continuing care promise or is proposing to
11 make this promise and has complied with Section 1771.4.

12 (5) “Resident” means a person who enters into a continuing
13 care contract with a provider, or who is designated in a continuing
14 care contract to be a person being provided or to be provided
15 services, including care, board, or lodging.

16 (6) “Residential care facility for the elderly” means a housing
17 arrangement as defined by Section 1569.2.

18 (7) “Residential living unit” means a living unit in a continuing
19 care retirement community that is not used exclusively for assisted
20 living services or nursing services.

21 ~~(s)~~

22 ~~(t)~~ (reserved)

23 ~~(t)~~

24 ~~(u)~~ (1) “Termination” means the ending of a continuing care
25 contract as provided for in the terms of the continuing care contract.

26 (2) “Transfer trauma” means death, depression, or regressive
27 behavior, that is caused by the abrupt and involuntary transfer of
28 an elderly resident from one home to another and results from a
29 loss of familiar physical environment, loss of well-known
30 neighbors, attendants, nurses and medical personnel, the stress of
31 an abrupt break in the small routines of daily life, or the loss of
32 visits from friends and relatives who may be unable to reach the
33 new facility.

34 (3) “Transferor” means a person who transfers, or promises to
35 transfer, consideration in exchange for care and related services
36 under a continuing care contract or proposed continuing care
37 contract, for the benefit of another. A transferor shall have the
38 same rights to cancel and obtain a refund as the depositor under
39 the deposit agreement or the resident under a continuing care
40 contract.

1 SEC. 3. Section 1771.3 of the Health and Safety Code is
2 amended to read:

3 1771.3. (a) This chapter shall not apply to either of the
4 following:

5 (1) An arrangement for the care of a person by a relative.

6 (2) An arrangement for the care of a person or persons from
7 only one family by a friend.

8 (b) This chapter shall not apply to any admission or residence
9 agreements offered by residential communities for the elderly or
10 residential care facilities for the elderly that promise residents
11 preferred access to assisted living services or nursing care, when
12 each of the following conditions is satisfied:

13 (1) Residents pay on a fee-for-service basis for available assisted
14 living services and nursing care.

15 (2) The fees paid for available assisted living services and
16 nursing care are the same for residents who have previously
17 occupied a residential living unit as for residents who have not
18 previously occupied a residential living unit.

19 (3) No entrance fee or prepayment for future care or access,
20 other than monthly care fees, is paid by, or charged to, any resident
21 at the community or facility. For purposes of this paragraph, the
22 term entrance fee shall not include initial, deferred, or amortized
23 payments that cumulatively do not exceed ten thousand dollars
24 (\$10,000). This maximum shall automatically be adjusted on
25 January 1 of each year to reflect the increase over the prior year
26 in the Consumer Price Index for the Western United States for
27 health care items and services. The adjusted maximum shall be
28 rounded off to the nearest whole dollar. The annual adjustment
29 shall not result in a decrease to the maximum.

30 (4) The provider has not made a continuing care promise of
31 preferred access, other than a promise as described in paragraph
32 (5).

33 (5) The admission or residence agreement states:

34 (A) "This agreement does not guarantee that an assisted living
35 or nursing bed will be available for residents, but, instead, promises
36 preferred access to any assisted living or nursing beds that are
37 available at the community or facility. The promise of preferred
38 access gives residents who have previously occupied a residential
39 living unit a right over other persons to such beds."

1 (B) "A continuing care contract promises that care will be
2 provided to residents for life or for a term in excess of a year.
3 (Name of community or facility) is not a continuing care retirement
4 community and (name of provider) does not hold a certificate of
5 authority to enter into continuing care contracts and is not required
6 to have the same fiscal reserves as a continuing care provider. This
7 agreement is not a continuing care contract and is exempted from
8 the continuing care statutes under subdivision (b) of Section 1771.3
9 of the Health and Safety Code so long as the conditions set forth
10 in that section are met."

11 (6) The admission or residence agreement also states the policies
12 and procedures regarding transfers to higher levels of care within
13 the community or facility.

14 (c) Any entity may apply to the department for a Letter of
15 Exemption stating that the requesting entity satisfies the
16 requirements for an exemption under this section.

17 (d) The department shall issue a Letter of Exemption to a
18 requesting entity if the department determines either of the
19 following:

20 (1) The requesting entity satisfies each of the requirements for
21 an exemption under subdivision (b).

22 (2) The requesting entity satisfies each of the requirements for
23 an exemption under subdivision (b) other than the requirements
24 of paragraph (2) of subdivision (b), and there is no substantial
25 difference between the following:

26 (A) The fees for available assisted living services and skilled
27 nursing care paid by residents who have previously occupied a
28 residential living unit.

29 (B) The fees for available assisted living services and skilled
30 nursing care paid by residents who have not previously occupied
31 a residential living unit.

32 (e) An application to the department for a Letter of Exemption
33 shall include all of the following:

34 (1) A nonrefundable one thousand dollar (\$1,000) application
35 fee.

36 (2) The name and business address of the applicant.

37 (3) A description of the services and care available or provided
38 to residents of the community or facility.

1 (4) Documentation establishing that the requesting entity
2 satisfies the requirements for an exemption under this section,
3 including all of the following:

4 (A) A schedule showing all fees for assisted living services and
5 skilled nursing care charged to residents at the facility or
6 community who have previously occupied a residential living unit.

7 (B) A schedule showing all fees for assisted living services and
8 skilled nursing care charged to residents at the facility or
9 community who have not previously occupied a residential living
10 unit.

11 (C) A description of the differences between the fees for assisted
12 living services and skilled nursing care charged to residents who
13 have not previously occupied a residential unit and the fees for
14 assisted living services and skilled nursing care charged to residents
15 who have previously occupied a residential unit.

16 (D) A schedule showing any other fees charged to residents of
17 the community or facility.

18 (E) Copies of all admission and residence agreement forms that
19 have been entered into, or will be entered into, with residents at
20 the community or facility.

21 (5) Any other information reasonably requested by the
22 department.

23 (f) If at any time any of the conditions stated in this section are
24 not satisfied, then the requirements of this chapter apply, and the
25 department may impose appropriate remedies and penalties set
26 forth in Article 7 (commencing with Section 1793.5).

27 *SEC. 4. Section 1771.8 of the Health and Safety Code is*
28 *amended to read:*

29 1771.8. (a) The Legislature finds and declares all of the
30 following:

31 (1) The residents of continuing care retirement communities
32 have a unique and valuable perspective on the operations of and
33 services provided in the community in which they live.

34 (2) Resident input into decisions made by the provider is an
35 important factor in creating an environment of cooperation,
36 reducing conflict, and ensuring timely response and resolution to
37 issues that may arise.

38 (3) Continuing care retirement communities are strengthened
39 when residents know that their views are heard and respected.

1 (b) The Legislature encourages continuing care retirement
2 communities to exceed the minimum resident participation
3 requirements established by this section by, among other things,
4 the following:

5 (1) Encouraging residents to form a resident association, and
6 assisting the residents, the resident association, and its governing
7 body to keep informed about the operation of the continuing care
8 retirement community.

9 (2) Encouraging residents of a continuing care retirement
10 community or their elected representatives to select residents to
11 participate as board members of the governing body of the
12 provider.

13 (3) Quickly and fairly resolving any dispute, claim, or grievance
14 arising between a resident and the continuing care retirement
15 community.

16 (c) The governing body of a provider, or the designated
17 representative of the provider, shall hold, at a minimum,
18 semiannual meetings with the residents of the continuing care
19 retirement community, or the resident association or its governing
20 body, for the purpose of the free discussion of subjects including,
21 but not limited to, income, expenditures, and financial trends and
22 issues as they apply to the continuing care retirement community
23 and proposed changes in policies, programs, and services. Nothing
24 in this section precludes a provider from taking action or making
25 a decision at any time, without regard to the meetings required
26 under this subdivision.

27 (d) At least 30 days prior to the implementation of any increase
28 in the monthly care fee, the designated representative of the
29 provider shall convene a meeting, to which all residents shall be
30 invited, for the purpose of discussing the reasons for the increase,
31 the basis for determining the amount of the increase, and the data
32 used for calculating the increase. This meeting may coincide with
33 the semiannual meetings provided for in subdivision (c). At least
34 14 days prior to the meeting to discuss any increase in the monthly
35 care fee, the provider shall make available to each resident or
36 resident household comparative data showing the budget for the
37 upcoming year, the current year's budget, and actual and projected
38 expenses for the current year, and a copy shall be posted in a
39 conspicuous location at each facility.

1 (e) The governing body of a provider or the designated
2 representative of the provider shall provide residents with at least
3 14 days' advance notice of each meeting provided for in
4 subdivisions (c) and (d), and shall permit residents attending the
5 meeting to present issues orally and in writing. The governing
6 body of a provider or the designated representative of the provider
7 shall post the notice of, and the agenda for, the meeting in a
8 conspicuous place in the continuing care retirement community
9 at least 14 days prior to the meeting. The governing body of a
10 provider or the designated representative of the provider shall make
11 available to residents of the continuing care retirement community
12 upon request the agenda and accompanying materials at least seven
13 days prior to the meeting.

14 (f) Each provider shall make available to the resident association
15 or its governing body, or if neither exists, to a committee of
16 residents, a financial statement of activities for that facility
17 comparing actual costs to budgeted costs broken down by expense
18 category, not less than semiannually, and shall consult with the
19 resident association or its governing body, or, if neither exists,
20 with a committee of residents, during the annual budget planning
21 process. *A financial statement shall also be made available by a*
22 *provider who operates a continuing care at home program.* The
23 effectiveness of consultations during the annual budget planning
24 process shall be evaluated, at a minimum every two years, by the
25 continuing care retirement community administration. The
26 evaluation, including any policies adopted relating to cooperation
27 with residents, shall be made available to the resident association
28 or its governing body, or, if neither exists, to a committee of
29 residents at least 14 days prior to the next semiannual meeting of
30 residents and the provider's governing body provided for in
31 subdivision (c), and a copy of the evaluation shall be posted in a
32 conspicuous location at each facility.

33 (g) Each provider shall, within 10 days after the annual report
34 required pursuant to Section 1790 is submitted to the department,
35 provide, at a central and conspicuous location in the community,
36 a copy of the annual report, including the multifacility statement
37 of activities, and including a copy of the annual audited financial
38 statement, but excluding personal confidential information.

39 (h) Each provider shall maintain, as public information,
40 available upon request to residents, prospective residents, and the

1 public, minutes of the board of director's meetings and shall retain
2 these records for at least three years from the date the records were
3 filed or issued.

4 (i) The governing body of a provider that is not part of a
5 multifacility organization with more than one continuing care
6 retirement community in the state shall accept at least one resident
7 of the continuing care retirement community it operates to
8 participate as a nonvoting resident representative to the provider's
9 governing body.

10 (j) In a multifacility organization having more than one
11 continuing care retirement community in the state, the governing
12 body of the multifacility organization shall elect either to have at
13 least one nonvoting resident representative to the provider's
14 governing body for each California-based continuing care
15 retirement community the provider operates or to have a
16 resident-elected committee composed of representatives of the
17 residents of each California-based continuing care retirement
18 community that the provider operates select or nominate at least
19 one nonvoting resident representative to the provider's governing
20 body for every three California-based continuing care retirement
21 communities or fraction thereof that the provider operates. If a
22 multifacility organization elects to have one representative for
23 every three communities that the provider operates, the provider
24 shall provide to the president of the residents association of each
25 of the communities that do not have a resident representative, the
26 same notice of board meetings, board packets, minutes, and other
27 materials as the resident representative. At the reasonable discretion
28 of the provider, information related to litigation, personnel,
29 competitive advantage, or confidential information that is not
30 appropriate to disclose, may be withheld.

31 (k) In order to encourage innovative and alternative models of
32 resident involvement, a resident selected pursuant to subdivision
33 (i) to participate as a resident representative to the provider's
34 governing body may, at the option of the resident association, be
35 selected in any one of the following ways:

36 (1) By a majority vote of the resident association of a provider
37 or by a majority vote of a resident-elected committee of residents
38 of a multifacility organization.

39 (2) If no resident association exists, any resident may organize
40 a meeting of the majority of the residents of the continuing care

1 retirement community to select or nominate residents to represent
2 them before the governing body.

3 (3) Any other method designated by the resident association.

4 (l) The resident association, or organizing resident, or in the
5 case of a multifacility organization, the resident-elected committee
6 of residents, shall give residents of the continuing care retirement
7 community at least 30 days' advance notice of the meeting to select
8 a resident representative and shall post the notice in a conspicuous
9 place at the continuing care retirement community.

10 (m) (1) Except as provided in subdivision (n), the resident
11 representative shall receive the same notice of board meetings,
12 board packets, minutes, and other materials as members and shall
13 be permitted to attend, speak, and participate in all meetings of
14 the board.

15 (2) Resident representatives may share information from board
16 meetings with other residents, unless the information is confidential
17 or doing so would violate fiduciary duties to the provider. In
18 addition, a resident representative shall be permitted to attend
19 meetings of the board committee or committees that review the
20 annual budget of the facility or facilities and recommend increases
21 in monthly care fees. The resident shall receive the same notice
22 of committee meetings, information packets, minutes, and other
23 materials as committee members, and shall be permitted to attend,
24 speak at, and participate in, committee meetings. Resident
25 representatives shall perform their duties in good faith and with
26 such care, including reasonable inquiry, as an ordinarily prudent
27 person in a like position would use under similar circumstances.

28 (n) Notwithstanding subdivision (m), the governing body may
29 exclude resident representatives from its executive sessions and
30 from receiving board materials to be discussed during executive
31 ~~session~~ sessions. However, resident representatives shall be
32 included in executive sessions and shall receive all board materials
33 to be discussed during executive sessions related to discussions of
34 the annual budgets, increases in monthly care fees, indebtedness,
35 and expansion of new and existing continuing care retirement
36 communities.

37 (o) The provider shall pay all reasonable travel costs for the
38 resident representative.

39 (p) The provider shall disclose in writing the extent of resident
40 involvement with the board to prospective residents.

1 (q) Nothing in this section prohibits a provider from exceeding
2 the minimum resident participation requirements of this section
3 by, for example, having more resident meetings or more resident
4 representatives to the board than required or by having one or more
5 residents on the provider's governing body who are selected with
6 the active involvement of residents.

7 (r) On or before April 1, 2003, the department, with input from
8 the Continuing Care Advisory Committee of the department
9 established pursuant to Section 1777, shall do all of the following:

10 (1) Make recommendations to the Legislature as to whether
11 any changes in current law regarding resident representation to
12 the board is needed.

13 (2) Provide written guidelines available to residents and
14 providers that address issues related to board participation,
15 including rights and responsibilities, and that provide guidance on
16 the extent to which resident representatives who are not voting
17 members of the board have a duty of care, loyalty, and obedience
18 to the provider and the extent to which providers can classify
19 information as confidential and not subject to disclosure by resident
20 representatives to other residents.

21 *SEC. 5. Section 1790 of the Health and Safety Code is amended*
22 *to read:*

23 1790. (a) Each provider that has obtained a provisional or final
24 certificate of authority and each provider that possesses an inactive
25 certificate of authority shall submit an annual report of its financial
26 condition. The report shall consist of audited financial statements
27 and required reserve calculations, with accompanying certified
28 public accountants' opinions thereon, the reserve information
29 required by paragraph (2), Continuing Care Provider Fee and
30 Calculation Sheet, evidence of fidelity bond as required by Section
31 1789.8, and certification that the continuing care contract in use
32 for new residents has been approved by the department, all in a
33 format provided by the department, and shall include all of the
34 following information:

35 (1) A certification, if applicable, that the entity is maintaining
36 reserves for prepaid continuing care contracts, statutory reserves,
37 and refund reserves.

38 (2) Full details on the status, description, and amount of all
39 reserves that the provider currently designates and maintains, and

1 on per capita costs of operation for each continuing care retirement
2 community operated.

3 (3) Disclosure of any funds accumulated for identified projects
4 or purposes and any funds maintained or designated for specific
5 contingencies. Nothing in this subdivision shall be construed to
6 require the accumulation of funds or funding of contingencies, nor
7 shall it be interpreted to alter existing law regarding the reserves
8 that are required to be maintained.

9 (4) *Disclosure, if applicable, of the financial impact of any*
10 *continuing care at home program operated by the provider on the*
11 *facility's overall financial health.*

12 (5) Full details on any increase in monthly care fees, the basis
13 for determining the increase, and the data used to calculate the
14 increase.

15 ~~(5)~~

16 (6) The required reserve calculation schedules shall be
17 accompanied by the auditor's opinion as to compliance with
18 applicable statutes.

19 ~~(6)~~

20 (7) Any other information as the department may require.

21 (b) Each provider shall file the annual report with the department
22 within four months after the provider's fiscal yearend. If the
23 complete annual report is not received by the due date, a one
24 thousand dollar (\$1,000) late fee shall accompany submission of
25 the reports. If the reports are more than 30 days past due, an
26 additional fee of thirty-three dollars (\$33) for each day over the
27 first 30 days shall accompany submission of the report. The
28 department may, at its discretion, waive the late fee for good cause.

29 (c) The annual report and any amendments thereto shall be
30 signed and certified by the chief executive officer of the provider,
31 stating that, to the best of his or her knowledge and belief, the
32 items are correct.

33 (d) A copy of the most recent annual audited financial statement
34 shall be transmitted by the provider to each transferor requesting
35 the statement.

36 (e) A provider shall amend its annual report on file with the
37 department at any time, without the payment of any additional fee,
38 if an amendment is necessary to prevent the report from containing
39 a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal yearend. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the waiver. If the department approves the request, the following shall be submitted to the department annually:

(1) Evidence of trust fund or performance bond and its amount.

(2) A list of continuing care residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section.

(3) A provider fee as required by subdivision (c) of Section 1791.

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

~~SEC. 4.~~

~~SEC. 6.~~ Section ~~1793.62~~ 1793.63 is added to the Health and Safety Code, to read:

~~1793.62.~~

1793.63. (a) A provider of a continuing care at home program ~~as defined in paragraph (10) of subdivision (c) of Section 1771~~ shall comply with all of the following:

(1) The provider shall file an abbreviated application, including, but not limited to, feasibility information, for approval by the department.

(2) The provider shall hold a certificate of authority issued by the department authorizing the program to enter into continuing care contracts.

1 (3) The provider shall enter into a service agreement, approved
2 by the department, with each of its clients. The service agreement
3 shall include, but need not be limited to, provisions setting forth
4 all of the following:

5 (A) A description of the services to be provided.

6 (B) The fees to be paid by the client, including, but not limited
7 to, a description of, and the basis for, any potential increase in
8 those fees.

9 (C) The grounds for termination of the service agreement, and
10 the grounds upon which the client may be transferred to another
11 facility.

12 (D) The duration of the service agreement.

13 (4) The provider ~~shall~~ *may, with the consent of the client or his*
14 *or her legal representative,* transfer the client to an appropriate
15 licensed health facility or residential care facility if the client's
16 health or care needs exceed the provider's ability to provide needed
17 services, or exceed the provider's authorized scope of services.

18 (5) The provider shall conduct an assessment of the resident's
19 service needs upon the initiation of service. The assessment shall
20 be updated annually thereafter, or sooner if a significant change
21 in the client's health or mental status occurs.

22 (6) *The provider shall conduct actuarial analyses that present*
23 *the impact of the continuing care at home program on the overall*
24 *operation of the continuing care retirement community or*
25 *multilevel retirement community and shall make this information*
26 *available to all residents.*

27 (7) *The provider may provide services, as specified in the service*
28 *agreement, in the facility or through an appropriately credentialed*
29 *third party subject to space availability. Continuing care retirement*
30 *community residents will be given priority over continuing care*
31 *at home residents when applying for skilled nursing services.*

32 (8) *The provider shall disclose to residents information*
33 *regarding which locations of the continuing care retirement*
34 *community or multilevel retirement community will be made*
35 *available to continuing care at home participants prior to the*
36 *operation of the program.*

37 (b) A provider of a continuing care at home program ~~as defined~~
38 ~~in subdivision (k) of Section 1569.145~~ may do all of the following:

39 (1) Furnish one or more services to an elderly person in the
40 elderly person's own private residence, including, but not limited

1 ~~to, meals, housekeeping, laundry, home maintenance, grounds~~
2 ~~maintenance, companionship, social activities, recreational~~
3 ~~activities, and referrals to other care providers. to the following:~~

4 (A) *Remote monitoring.*

5 (B) *Assistance with bathing, dressing, or grooming.*

6 (C) *Assistance with the storage and administration of*
7 *medications.*

8 (D) *Meals, housekeeping, laundry, home maintenance, grounds*
9 *maintenance, companionship, social activities, recreational*
10 *activities, and referrals to other care and service providers.*

11 (2) Furnish, at the provider's discretion, additional services on
12 the provider's campus, as appropriate. This paragraph does not
13 authorize provision of services by an unlicensed person or in an
14 unlicensed setting, if those services are otherwise required by law
15 to be provided by a licensed person or in a licensed setting.

16 (3) Furnish any *additional supportive services that would*
17 *otherwise be deemed to be a basic service as defined in Section*
18 *1569.312, with care and supervision as defined in Section 1569.2*
19 *provided through an appropriately licensed third-party provider,*
20 *if applicable. in an elderly person's private home as specified in*
21 *the service agreement within the limits of licensure, as required.*

22 (4) Establish, at its discretion, within the private residence of
23 the elderly person, a smoke detection system, a fire alarm, a fire
24 suppression sprinkler system, a medical alert system, a system for
25 routine inspections, and other safety features.

26 (5) ~~Provide or arrange for any of the following services within~~
27 ~~the private residence of the elderly person:~~

28 (A) ~~Routine remote monitoring.~~

29 (B) ~~Occasional assistance with bathing, dressing, or grooming.~~

30 (C) ~~Delivery of, and assistance with storage and administration~~
31 ~~of, prepackaged medications, for a mentally competent client.~~

32 ~~SEC. 5.~~

33 *SEC. 7.* No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

O